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Counsel to the Debtors and Debtors
in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

- - - - - X
In re: : Chapter 11
:
CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)
et al., :
: Jointly Administered
Debtors. :
: Auction: May 11, 2009 at 10:00
: a.m. (ET)
: Obj. Deadline: May 12, 2009 at
: 4:00 p.m. (ET)
: Sale Hearing: May 13, 2009 at
: 10:00 a.m. (ET)
- - - - - X

**NOTICE OF ENTRY OF ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS
105, 332 AND 363 (I) APPROVING PROCEDURES IN CONNECTION WITH
SALE OF INTELLECTUAL PROPERTY, INTERNET-RELATED PROPERTY AND
CUSTOMER INFORMATION, (II) AUTHORIZING SELLERS TO ENTER INTO
STALKING HORSE AGREEMENT IN CONNECTION THEREWITH, (III)
APPROVING CERTAIN BID PROTECTIONS IN CONNECTION THEREWITH, (IV)
APPROVING FORM AND MANNER OF SALE NOTICE AND (V) SETTING AUCTION
AND SALE HEARING DATES**

PLEASE TAKE NOTICE that on April 9, 2009, Circuit City
Stores West Coast, Inc., and Circuit City Stores, Inc. (the
"Sellers" and, collectively with the debtors and debtors in
possession in the above-captioned jointly administered cases,

the "Debtors")¹ filed their Motion for Orders under Bankruptcy Code Sections 105, 332 and 363 (I)(A) Approving Procedures In Connection With Sale of Intellectual Property, Internet-Related Property and Customer Information, (B) Authorizing Sellers To Enter Into Stalking Horse Agreement In Connection Therewith, (C) Approving Certain Bid Protections In Connection Therewith, (D) Approving Form And Manner Of Sale Notice And (E) Setting Auction And Sale Hearing Dates; (II) Authorizing U.S. Trustee To Appoint Consumer Privacy Ombudsman; (III) Approving Sale Of Intellectual Property, Internet-Related Property And Customer Information Free And Clear Of All Interests And (IV) Granting Related Relief (Docket No. 2977, the "Motion").

PLEASE TAKE FURTHER NOTICE that, on April 16, 2009, the Court entered the Order Pursuant To Bankruptcy Code Sections 105, 332 and 363 (I) Approving Procedures In Connection With Sale of Intellectual Property, Internet-Related Property and Customer Information, (II) Authorizing Sellers To Enter Into Stalking Horse Agreement In Connection Therewith, (III) Approving Certain Bid Protections In Connection Therewith, (IV) Approving Form And Manner Of Sale Notice And (V) Setting Auction And Sale Hearing Dates (Docket No. 3071, the "Bidding Procedures Order").²

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures Order, the Sellers are authorized to enter into the Asset Purchase Agreement by and among the Sellers and Systemax Inc. (the "Agreement") as a "stalking horse" agreement.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures Order and procedures approved thereby (the "Bidding Procedures"), the Sellers will accept competing bids on

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc. (6796), Sky Venture Corp. (0311), Prahs, Inc. (n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courcheval, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address is 9950 Mayland Drive, Richmond, Virginia 23233.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion or the Bidding Procedures Order.

the Intellectual Property and Internet Assets, which are due to be received by no later than **5:00 p.m. (Eastern) on May 6, 2009** (the "Bid Deadline"). **All bids must comply with the Bidding Procedures.**

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures Order and the Bidding Procedures, in the event that the Sellers receive any Qualified Bids, an auction with respect to the Sale (the "Auction") will be conducted at the offices of Skadden, Arps, Slate, Meagher & Flom, LLP, 4 Times Square, New York, New York 10036], tentatively commencing at **10:00 a.m. (Eastern) on May 11, 2009** or such later time or other place as the Sellers notify all Qualified Bidders who have submitted Qualified Bids.

PLEASE TAKE FURTHER NOTICE that the Debtors have made the Motion, the Bidding Procedures Order, the Bidding Procedures, the Agreement and any related documents available at www.kccllc.net/circuitcity.

Dated: April 16, 2009
Richmond, Virginia

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EXHIBIT 1

(Motion)

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

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In re: : Chapter 11
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CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)
et al., :
:
Debtors. : Jointly Administered
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MOTION FOR ORDERS PURSUANT TO BANKRUPTCY CODE SECTIONS 105,
332 AND 363 (I)(A) APPROVING PROCEDURES IN CONNECTION WITH
SALE OF INTELLECTUAL PROPERTY, INTERNET-RELATED PROPERTY AND
CUSTOMER INFORMATION, (B) AUTHORIZING SELLERS TO ENTER INTO
A STALKING HORSE AGREEMENT IN CONNECTION THEREWITH, (C)
APPROVING CERTAIN BID PROTECTIONS IN CONNECTION THEREWITH,
(D) APPROVING FORM AND MANNER OF SALE NOTICE AND (E) SETTING
AUCTION AND SALE HEARING DATES; (II) AUTHORIZING U.S.
TRUSTEE TO APPOINT CONSUMER PRIVACY OMBUDSMAN;
(III) APPROVING SALE OF INTELLECTUAL PROPERTY, INTERNET-
RELATED PROPERTY AND CUSTOMER INFORMATION FREE AND CLEAR OF
ALL INTERESTS; AND (IV) GRANTING RELATED RELIEF

Circuit City Stores West Coast, Inc. and Circuit
City Stores, Inc. (the "Sellers" and, collectively with the

debtors and debtors in possession in the above-captioned jointly administered cases, the "Debtors")¹ hereby move (the "Motion"), pursuant to sections 105, 332 and 363 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for entry of orders (I)(A) approving procedures in connection with soliciting bids for a sale (the "Sale") of certain of the Sellers' intellectual property, internet-related property and customer information (all as more particularly set forth in the Agreement (as defined herein), the "Intellectual Property and Internet Assets"), (B) authorizing the Sellers to enter into a stalking horse agreement in connection with the Sale of the Intellectual Property and Internet Assets, (C) approving certain Bid Protections (as defined below) in connection therewith, (D) approving the form and manner of sale notice (the "No-

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapasco Designs, Inc. (6796), Sky Venture Corp. (0311), Prahs, Inc. (n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Seller, the address is 9950 Mayland Drive, Richmond, Virginia 23233.

tice Procedures"), and (E) scheduling Auction and Sale Hearing dates (each as defined below); (II) authorizing the U.S. Trustee to appoint a consumer privacy ombudsman; (III) approving the Sale of the Intellectual Property and Internet Assets free and clear of all Interests (as defined below) and (IV) granting related relief. In support of the Motion, the Sellers respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105, 332 and 363 and Bankruptcy Rules 2002 and 6004.

BACKGROUND

3. On November 10, 2008 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

5. On November 12, 2008, the Office of the United States Trustee for the Eastern District of Virginia appointed a statutory committee of unsecured creditors (the "Creditors' Committee"). To date, no trustee or examiner has been appointed in these chapter 11 cases.

6. On January 16, 2009, the Court authorized the Debtors, among other things, to conduct going-out-of-business sales at the Debtors' remaining 567 stores pursuant to an agency agreement (the "Agency Agreement") between the Debtors and a joint venture, as agent (the "Agent"). On January 17, 2009, the Agent commenced going-out-of-business sales pursuant to the Agency Agreement at the Debtors' remaining stores.

RELIEF REQUESTED

7. By this Motion, the Sellers seek (I) entry of an order, substantially in the form attached hereto as Exhibit A (the "Bidding Procedures Order") (A) approving the bidding procedures attached to the Bidding Procedures Order as Exhibit 1 (the "Bidding Procedures"), (B) authorizing the

Sellers to enter into the Asset Purchase Agreement (the "Agreement"),² attached to the Bidding Procedures Order as Exhibit 2, by and among the Sellers and Systemax Inc. (the "Purchaser" or the "Stalking Horse Bidder") as a "stalking horse" agreement, (C) authorizing the Sellers to provide the Stalking Horse Bidder with certain Bid Protections (as defined below), (D) approving the Notice Procedures and (E) scheduling the Auction for May 11, 2009 and the hearing with respect to any Bid or proposal accepted by the Sellers (the "Sale Hearing") for May 13, 2009; (II) entry of an order substantially in the form attached hereto as Exhibit B (the "CPO Order") ordering the U.S. Trustee to appoint a consumer privacy ombudsman and (III) entry of an order, substantially in the form attached hereto as Exhibit C (the "Sale Approval Order") approving the Sale of the Intellectual Property and Internet Assets free and clear of all Interests and granting related relief.

BASIS FOR RELIEF

8. In the course of their continued liquidation, the Sellers have identified various assets -- including the

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Agreement.

Intellectual Property and Internet Assets -- that are valuable but for which the Sellers have no use going forward. The Sellers have thus determined that the sale of the Intellectual Property and Internet Assets would bring significant recovery for the Sellers' estates and creditors.

9. To help ensure that the Sellers receive the highest or otherwise best proposal for the Intellectual Property and Internet Assets, the Sellers seek authorization to enter into the Agreement with the Stalking Horse Bidder, and to solicit competing bids in accordance with the Bidding Procedures.

10. The Sellers believe that conducting the Auction with respect to the Intellectual Property and Internet Assets among the Purchaser and any bidders submitting competing offers will enable them to maximize value and minimize expenses incurred.

BIDDING PROCEDURES³

11. **The Bid Deadline.** The Sellers propose that bids to purchase all or substantially all of the Intellectual Property and Internet Assets (the "Bids") be required

³ This section of the Motion constitutes a summary of the Bidding Procedures. In the event there is a conflict between the Motion and the Bidding Procedures, the Bidding Procedures shall control.

to be submitted on or before May 6, 2009 at 5:00 p.m. (Eastern) (the "Bid Deadline"). Up until the Bid Deadline, the Sellers will accept competing Bids to purchase the Intellectual Property and Internet Assets from those bidders who submit qualified proposals in accordance with the Bidding Procedures (collectively, the "Qualified Bidders" and such Bids by Qualified Bidders, the "Qualified Bids"). Such competing Bids must exceed the Stalking Horse Bid by a minimum of \$350,000 (the "Initial Minimum Overbid").

12. **The Auction.** The Sellers propose that, if they receive any Qualified Bids besides the Stalking Horse Bid, on May 11, 2009 they will hold an auction (the "Auction") among such Qualified Bidders. The Auction will take place at the offices of Skadden, Arps, Slate, Meagher & Flom, LLP, 4 Times Square, New York, New York 10036, beginning at 10:00 a.m. (Eastern) or such later time or other place as the Sellers notify all Qualified Bidders who have submitted Qualified Bids. The Qualified Bidders who wish to participate in an Auction, or their authorized representative, must be present in person or by phone for the Auction.

13. The Sellers will commence the Auction with the highest or otherwise best Qualified Bid submitted prior

to the Bid Deadline. During the Auction, any Qualified Bidder may submit subsequent Bids (the "Auction Bids"). Each Auction Bid will exceed the previous Bid by a minimum of \$25,000 (the "Subsequent Minimum Overbid"). Bidding in the Auction will remain open until all Qualified Bidders, including the Stalking Horse Bidder, have submitted their highest or otherwise best proposal for the Intellectual Property and Internet Assets.

14. **The Successful Bidder.** Upon the conclusion of bidding in the Auction, the Sellers, after consultation with counsel to the Creditors' Committee, will determine which proposal provides the Sellers, their estates and creditors with the highest or otherwise best offer, taking into account the net value of the offer to the Sellers' estates. Finally, the Sellers will announce the bidder or bidders submitting the proposal that they have determined constitutes the highest or otherwise best proposal (the "Successful Bid," and the party submitting the Successful Bid, the "Successful Bidder") and close the Auction.

15. In qualifying bidders and conducting the Auction, the Sellers intend to implement the Bidding Procedures summarized above substantially in the form attached hereto

as Exhibit A. The Sellers reserve their right to modify such procedures as necessary or as they deem appropriate, in consultation with counsel to the Creditors' Committee, to maximize value for their estates and creditors. The Sellers believe that such procedures are appropriate and will maximize the recovery for the Sellers and their estates in connection with the Auction.

THE AGREEMENT

A. Marketing Efforts

16. Since the Petition Date, the Debtors have pursued various restructuring alternatives, including a stand-alone plan, transactions with strategic partners and sales of all or certain aspects of their businesses. As noted above, these efforts ultimately culminated in the Court's approval of the Agency Agreement and the Debtors' liquidation.

17. In the period leading up to the Court's authorization of the liquidation, the Debtors' financial advisor, Rothschild, Inc. ("Rothschild") actively contacted potential purchasers concerning sales of some or all of the assets of the Debtors. In connection therewith, Rothschild received several indications of interest in certain of the

Debtors' intellectual property and internet-related assets, including two offers to purchase certain of such assets.

18. Given the Debtors' focus on pursuing a sale of the Debtors' businesses as a going concern, the Debtors did not go forward with these offers at that time. However, following the Court's approval of the Agency Agreement and liquidation of the Debtors' inventory, the Debtors and their advisors recommenced efforts to market the Intellectual Property and Internet Assets.

19. To that end, Rothschild developed a comprehensive list of potential purchasers, including (i) certain potential purchasers that had expressed an interest in some or all of the Debtors' intellectual property and internet-related assets during the earlier sale process, (ii) parties that expressed an interest in some or all of the Debtors' intellectual property and internet-related assets in the period following approval of the liquidation and (iii) other potential purchasers who, in the opinion of Rothschild, may have been interested in a possible transaction involving such assets. In total, Rothschild contacted approximately 90 potential purchasers of the Debtors' intellectual property and internet-related assets.

20. A confidential online data room was set up containing information pertinent to the intellectual property and internet-related assets (the "Data Room"). Potential purchasers that expressed interest and executed a non-disclosure agreement were granted access to the Data Room. In addition, upon request, the Debtors' management conducted due diligence calls with potential purchasers. In all, approximately 40 interested parties executed nondisclosure agreements (including parties who executed such agreements in connection with the earlier sale process) and conducted due diligence through the Data Room and/or through discussions with management.

21. During the period from late January to mid-February, the Debtors received eight bids from prospective purchasers for various portions of the Debtors' intellectual property and internet-related assets. Rothschild reviewed each of these bids with the Debtors and their other advisors. Subsequently, Rothschild and the Debtors chose to continue negotiations with two potential purchasers, including the Purchaser, who each presented potential stalking horse offers for substantial packages of the Debtors' intellectual property and internet-related assets at values that were, in

the judgment of Rothschild and the Debtors, superior to the other offers. Each of the two potential purchasers presented transaction structures that included both upfront cash and potential future contingent payments. Negotiations with these two parties continued for several weeks through the end of March. The negotiations revolved around transaction structure, price, assets to be sold, and contractual arrangements.

22. These negotiations culminated in the signing of the Agreement with the Purchaser on April 5, 2009 for the purchase of the Intellectual Property and Internet Assets.

23. From and after the date hereof, the Debtors intend to market their intellectual property and internet-related assets, including soliciting bids for the Intellectual Property and Internet Assets upon approval of the Bidding Procedures Order. To that end, the Debtors intend to seek authorization to retain Streambank, LLC as their intellectual property disposition consultant in these chapter 11 cases.

B. The Agreement.

24. Pursuant to the Agreement, the Sellers have agreed to sell the Intellectual Property and Internet Assets to the Purchaser for \$6.5 million plus the Earn-Out Payment

(as defined herein)(collectively, the "Purchase Price"), subject to higher or otherwise better proposals and this Court's approval.

25. The other significant terms of the Agreement are as follows:⁴

(a) General Terms. The Purchaser would acquire the Intellectual Property and Internet Assets, consisting of certain of the Sellers' (i) trademarks and the associated goodwill, (ii) domain names, (iii) toll-free numbers, (iv) patents and registrations and applications therefor, (v) website content and (vi) customer information, including the Circuit City Data and the Alpine Data, each as more fully described in the Agreement or Schedule 1.02(a) to the Agreement, through an asset sale.

(b) Excluded Assets. Notwithstanding anything to the contrary in the Agreement, and for the avoidance of doubt, the Sellers are not selling, conveying, assigning, transferring or delivering to the Purchaser any assets or rights other than those conveyed to the Purchaser pursuant to section 1.02(a) of the Agreement.

(c) Sale. The Intellectual Property and Internet Assets would be sold free and clear of all liens, mortgages, security interests, charges, easements, leases, subleases, covenants, rights of way, options, claims, restrictions or encumbrances of any kind (collectively, the "Liens"), except for (i) mechanics', carriers', workmen's, landlord's, repairmen's or other like Liens arising or incurred in the ordinary course of business, (ii) other imperfections of title or encumbrances, if any, that, individually and in the aggregate, do not materially impair the use of the Intellectual Property and Internet Assets in the conduct of the Seller's business as conducted as of December 31, 2008, or (iii) Liens listed in Section 3.03 of the Sellers' disclosure schedules attached to the Agreement (collectively, the

⁴ In the event of any discrepancy between the Agreement and this summary of the Agreement, the provisions of the Agreement are controlling.

"Assumed Liens"), and free and clear of all debts, adverse claims, liabilities, commitments, responsibilities and obligations of any kind or nature whatsoever, direct, indirect, absolute or contingent, matured or unmatured, whether accrued, vested or otherwise, whether known or unknown, foreseen or unforeseen, and whether or not actually reflected, or required to be reflected, in a party's balance sheets or other books and records (collectively, the "Liabilities" and together with the Liens, other than the Assumed Liens, the "Interests").

(d) Earn-Out Payment. The Purchaser would pay to the Sellers (the "Earn-Out Payment") a certain percentage of the gross revenues of the Purchaser or its affiliates resulting from the sale of (i) goods originated through any of the domain names or URLs acquired under the Agreement or (ii) any other proprietary product that is sold by Purchaser or its affiliates utilizing the Circuit City brand, during (i) the period commencing on the thirtieth (30th) day following the date of Closing (as defined herein) and ending on the one year anniversary of the thirtieth (30th) day following the date of Closing (the "First Earn-Out Period"); (ii) the period commencing on the day immediately following the end of the First Earn-Out Period and ending on the one year anniversary of the end of the First Earn-Out Period (the "Second Earn-Out Period"); and (iii) the period commencing on the day immediately following the end of the Second Earn-Out Period and ending on the date six (6) months after the end of the Second Earn-Out Period (the "Third Earn-Out Period"). The percentage would vary depending on the magnitude of the revenues generated during each Earn-Out Period.

(e) Transfer Taxes. All transfer, documentary, sales, use, stamp, registration and other such taxes, any conveyance fees, any recording charges and any other similar fees and charges (including penalties and interest in respect thereof) (collectively, the "Transfer Taxes") attributable to Sellers' Sale of the Intellectual Property and Internet Assets would be borne and paid equally by the Sellers, on the one hand, and the Purchaser, on the other hand.

(f) Bankruptcy Court Approval. The Sale of the Intellectual Property and Internet Assets would be subject to approval by this Court and competitive bidding pursuant to the Bidding Procedures.

(g) Documentation. The Sale would be effected pursuant to the Agreement and related documentation.

(h) Representations And Warranties. Pursuant to the Agreement, the Sellers would provide certain standard representations and warranties relating to the Sale, including representations and warranties with respect to the Intellectual Property and Internet Assets. The Purchaser would provide representations and warranties generally standard in a transaction of this type. The representations and warranties would not survive the Closing.

(i) Covenants. Pursuant to the Agreement, the Sellers and the Purchaser would make certain covenants including, among others: (i) that Sellers shall not sell or otherwise dispose of the Intellectual Property and Internet Assets, (ii) that Sellers and/or Purchaser, as the case may be, shall use reasonable best efforts to ensure that conditions precedent to the agreement are satisfied, to obtain necessary approvals of the Sale, including Court approval, and to facilitate the transfer the Intellectual Property and Internet Assets, (iii) that Purchaser shall use its best efforts to satisfy or otherwise address matters related to the conveyance of the Circuit City Data, including the transfer of personally identifiable information ("PII"), identified by any consumer privacy ombudsman, as defined by the Bankruptcy Code, or otherwise, (iv) that the Purchaser shall agree to certain restrictions with respect to the use of the Circuit City Data, as described more fully in the following subsection, (v) that Sellers will file this Motion within five (5) business days of execution of the Agreement, (vi) that Purchaser shall execute and deliver to the parties to that certain Asset Purchase Agreement, dated February 23, 2009, among Bell Canada, 4458729 Canada, Inc., InterTAN Canada, Ltd., Circuit City Stores West Coast, Inc. and Ventoux International, LLC (the "Canada APA") a trademark licensing agreement in the form attached to the Canada APA with respect to certain licensed trademarks (the "Canada License Agreement," attached to the Bid Procedures as Exhibit 1), (vii) that Purchaser may request a list of employees from the Sellers and may solicit such employees for possible retention after the Closing, (viii) that Sellers shall afford Purchaser reasonable access to information about the Sellers' businesses prior to the Closing and (ix) that Sellers shall use commercially reasonable efforts to protect and

preserve the trademarks and patents included in the Intellectual Property and Internet Assets and shall not license, transfer or assign such trademarks or patents except as provided by the Canada License Agreement.

(j) Privacy Policy and Non-Exclusive Right to Use Circuit City Data In Connection with Extended Warranties.

With respect to the transfer Circuit City Data from the Sellers to the Purchaser, the Purchaser (at a minimum) agrees (a) to adopt and comply with the Sellers' privacy policy with respect to the Circuit City Data, attached to the Agreement as Schedule G (the "Privacy Policy"); (b) to use PII for the same purpose(s) as are specified in the Privacy Policy; (c) that, prior to making any material change to the Privacy Policy with respect to Circuit City Data or the use or disclosure of PII different from that specified in the Privacy Policy, the Purchaser will notify the persons whose PII is included in the Circuit City Data by mail or email and afford such persons the opportunity to opt-out of the changes to the Privacy Policy or the new uses of their Data; (d) to employ appropriate information security controls and procedures (technical, operational, and managerial) to protect the Circuit City Data; (e) to abide by all applicable U.S. laws and regulations; (f) to take such additional reasonable actions as may be agreed between the Sellers and the Purchaser or recommended or requested by the CPO, and (g) to grant the Sellers a non-exclusive, perpetual, royalty free, worldwide right to use the Circuit City Data in connection with the offer for sale and sale of renewals of extended warranties sold by Circuit City to its customers.

(k) Conditions Precedent. Each party's obligations under the Agreement would be subject to the satisfaction or waiver of certain conditions at or prior to the Closing, including that (i) all necessary governmental approvals shall have been obtained, (ii) the representations and warranties of each party shall be or shall have been true at the relevant time and (iii) the Sale Approval Order (and any other necessary orders), containing the findings and conclusions set forth in the Agreement, shall have been entered by the Court.

(l) Termination. The Agreement could be terminated prior to Closing in the following circumstances: (i) by Purchaser and Sellers, upon mutual written consent, (ii)

by Purchaser or Sellers, upon written notice, if the Closing shall not have occurred on or before the earlier of (A) the consummation of an alternate transaction, (B) thirty (30) days after the Sale Hearing or (C) July 15, 2009, (iii) by Sellers or Purchaser, if the other party shall have breached or failed to perform in any material respect any of its respective representations, warranties, covenants or other agreements contained in the Agreement, under the conditions as provided in the Agreement, (iv) by Purchaser, upon written notice, if the Bid Procedures Order is not entered on or before twenty-five (25) days from the date of the filing of this Motion or if such Order is stayed, reversed, amended or vacated, (v) by Purchaser, upon written notice, if the Sale Approval Order is not entered on or before forty-five (45) days from the date of entry of the Bid Procedures Order or if the Sale Approval has not become final within eleven (11) days after its entry, (vi) by Purchaser or Sellers, if applicable law or an injunction prevents the consummation of the transactions under the Agreement or (vii) by Sellers, if the Sellers terminate the bidding process or the Auction for the Intellectual Property and Internet Assets. In the event of termination, Purchaser shall, upon request, return to the Sellers or destroy all materials received from the Sellers relating to the proposed transactions and continue to abide by the terms of the confidentiality agreement between the parties.

(m) Break-Up Fee and Expense Reimbursement. The Sellers would pay Purchaser a break-up fee of \$250,000 (the "Break-Up Fee") and would reimburse the actual, reasonable and documented attorney's fees and expenses incurred by Purchaser on or after January 23, 2009 and related to the Agreement, in an amount not to exceed \$75,000 (the "Expense Reimbursement") if, and only if (i)(A) the Purchaser is not in breach of or default under the Agreement, (B) the Agreement is not conditioned on conducting any further, or completing, due diligence and (C) the Sellers consummate the Sale for all or substantially all of the Intellectual Property and Internet Assets with a higher or otherwise better bidder at the Auction or (ii) the Sellers terminate the bidding and auction process.

(n) Closing. The closing of the transactions under the Agreement (the "Closing") shall take place at the Delaware offices of Skadden, Arps, Slate, Meagher & Flom,

LLP on the second (2nd) business day following the satisfaction or waiver of the conditions precedent to Closing (except those conditions precedent which can be fulfilled or waived only at Closing), or at such other time and place as shall be agreed upon by the Purchaser and the Sellers.

C. Bid Protections.

26. The Purchaser has expended, and likely will continue to expend, considerable time, money, and energy pursuing the Sale and has engaged in extended arm's length and good faith negotiations regarding a possible purchase of the Intellectual Property and Internet Assets. The Agreement is the culmination of these efforts.

27. In recognition of this expenditure of time, energy, and resources, the Sellers have agreed to provide certain bid protections to the Purchaser, including the Break-Up Fee and the Expense Reimbursement (together, the "Bid Protections"). Specifically, the Agreement provides for, and the Sellers respectfully request that the Bidding Procedures Order approve, the Break-Up Fee payable by the Sellers to the Purchaser in the amount of \$250,000 if (i) the Sellers terminate the Agreement to close an alternative transaction, so long as the Purchaser is not in breach of the Agreement and the Agreement is not conditioned on conducting or completing any further due diligence or obtaining

financing or (ii) the Sellers terminate the bidding and auction process.

28. In addition, the Sellers respectfully request this Court's approval of the Expense Reimbursement. As set forth in the Agreement, the Expense Reimbursement provides for reimbursement of the Purchaser's actual, reasonable and documented attorney's fees and expenses incurred by Purchaser on or after January 23, 2009 and related to the Agreement, in an amount not to exceed \$75,000, if (i) the Sellers terminate the Agreement to close an alternative transaction, so long as the Purchaser is not in breach of the Agreement and the Agreement is not conditioned on conducting or completing any further due diligence or obtaining financing or (ii) the Sellers terminate the bidding and auction process.

29. The Sellers believe that the proposed Bid Protections are fair and reasonable in view of (a) the analysis, due diligence investigation, and negotiation undertaken by the Purchaser in connection with the Sale and (b) the fact that the Purchaser's efforts would maximize the value of the Intellectual Property and Internet Assets for the benefit of all stakeholders, whether as a result of con-

summing the Sale pursuant to the Agreement or by generating a higher or otherwise better offer pursuant to the Bidding Procedures.

30. The Purchaser is unwilling to keep open its offer to purchase the Intellectual Property and Internet Assets under the terms of the Agreement unless this Court authorizes payment of the Bid Protections. Thus, absent entry of the Bidding Procedures Order and approval of the Bid Protections, the Sellers may lose the opportunity to obtain what they believe to be the highest and best offer for the Intellectual Property and Internet Assets. The Auction, moreover, is a competitive mechanism designed to test whether any alternative use for the Intellectual Property and Internet Assets would yield a higher or better return for the Sellers. Approving the Bid Protections will thus commit the Purchaser to serve as the Stalking Horse Bidder under the Agreement, and the Purchaser's bid would serve to start any additional bidding for the Intellectual Property and Internet Assets at a fair and reasonable purchase price.

31. Moreover, payment of the Break-Up Fee will not diminish the Sellers' estates. The Sellers would not be obligated to pay the Break-Up Fee or the Expense Reimburse-

ment unless either (i) they do so to accept an alternative Successful Bid, which would result in even greater value to the Sellers' estates and their stakeholders or (ii) they opt to terminate the bidding and auction process. This is particularly true given the Initial Minimum Overbid requirement, which ensures that Auction Bids represent higher or otherwise better offers for the Intellectual Property and Internet Assets, taking into account payment of the Bid Protections. The Sellers thus request that this Court authorize payment of the Bid Protections pursuant to the terms and conditions of the Agreement.

APPOINTMENT OF A CONSUMER PRIVACY OMBUDSMAN

32. Pursuant to the Agreement, the Sellers and the Purchaser agree to use their reasonable best efforts to satisfy and otherwise address matters relating to the conveyance of Circuit City Data as identified by a consumer privacy ombudsman (the "CPO"). Accordingly, the Sellers request that the Court order the U.S. Trustee to appoint a CPO pursuant to, and as defined by, Bankruptcy Code sections 332 and 363(b)(1)(B). The Sellers believe that the appointment of a CPO will ensure the protection of the PII included in the Circuit City Data.

THE SALE OF THE CIRCUIT CITY DATA

33. Pursuant to the Agreement, and subject to Court approval, the Sellers have agreed to sell and the Purchaser has agreed to purchase the Circuit City Data, including any PII included therein. With respect to the transfer of the Circuit City Data from the Sellers to the Purchaser, the Purchaser has expressly agreed to the restrictions set forth in section 5.06 of the Agreement, which are designed to safeguard PII.

34. Accordingly, the Sellers request that the Court approve the sale of the Circuit City Data as set forth above. As discussed further below, the Sellers believe a sale of the Circuit City Data, with the above protections, will adequately protect PII, complies with the Bankruptcy Code and is in the best interests of the Sellers and their estates and creditors.

NOTICE PROCEDURES

35. Within five (5) days after entry of the Bidding Procedures Order (the "Mailing Date"), the Sellers (or their agent) propose to serve the Motion, the Agreement, the Bidding Procedures, the Bidding Procedures Order and the proposed Sale Approval Order by electronic mail, if possible,

or first-class mail, postage prepaid, upon (i) all entities known to have expressed an interest in a transaction with respect to the Intellectual Property and Internet Assets during the past three (3) months, (ii) all entities known to have asserted any Lien upon the Intellectual Property and Internet Assets, (iii) all federal, state, and local regulatory or taxing authorities or recording offices, which have a reasonably known interest in the relief requested by the Motion and (iv) all parties entitled to notice under the Order Pursuant to Bankruptcy Code Sections 102 and 105, Bankruptcy Rules 2002 and 9007, and Local Bankruptcy Rules 2002-1 and 9013-1 Establishing Certain Notice, Case Management, and Administrative Procedures (D.I. 130; the "Case Management Order").

36. The Sellers also propose, pursuant to Bankruptcy Rule 2002(1) and 2002(d), to publish a notice of the Sale, substantially in the form attached hereto as Exhibit D, in the Wall Street Journal (International Edition), the New York Times and the Richmond Times Dispatch within five (5) days of entry of the Bidding Procedures Order or as soon as practicable thereafter. The Sellers request that such pub-

lication notice be deemed proper notice to any other interested parties whose identities are unknown to the Sellers.

APPLICABLE AUTHORITY

I. THE BIDDING PROCEDURES ARE REASONABLE AND APPROPRIATE.

37. Bankruptcy Code section 363(b)(1) provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1).

Moreover, Bankruptcy Code section 105(a) provides that "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

38. The Sellers believe that the Bidding Procedures are appropriate under Bankruptcy Code sections 105 and 363 to ensure that the bidding and auction process is fair and reasonable and will yield the maximum value for their estates and creditors. The Bidding Procedures permit the Sellers to maximize the value of the Intellectual Property and Internet Assets. In addition, the Bidding Procedures set deadlines for conducting the Auction and holding the Sale Hearing with respect to the transactions proposed herein.

39. Accordingly, the Sellers believe the Court should approve the Bidding Procedures, including the dates established thereby for, inter alia, the Bid Deadline, the Auction and the Sale Hearing. Similar procedures have been previously approved by this Court in other cases. See, e.g., In re The Rowe Companies, Case No. 06-11142 (SSM) (Bankr. E.D. Va. Dec. 20, 2006); In re Ceyoniq, Inc., Case No. 02-85887 (RGM) (Bankr. E.D. Va. Jan. 30, 2003).

II. THE BID PROTECTIONS REQUESTED HEREIN ARE REASONABLE AND SHOULD BE APPROVED.

40. In connection with Sale of the Intellectual Property and Internet Assets, the Court should authorize the Sellers to pay the Break-Up Fee and the Expense Reimbursement identified herein.

41. Agreements to provide break-up fees and other bidding incentives are designed to compensate a potential acquirer who serves as a catalyst that may attract higher and better offers, and have been approved in bankruptcy to encourage bidding. See In re Ryan, 261 B.R. 867, 870 (Bankr. E.D. Va. 2001). Break-up fees can be advantageous to both buyers and sellers because they encourage bidding to ensure that sellers receive the highest or otherwise best offer

while compensating the buyer for the risk of being outbid.

See id.

42. Break-up fees are allowed as an administrative expense claim against the estate if they satisfy the standard of section 503(b)(1). In re Tropea, 352 B.R. 766, 768 (Bankr. N.D.W.Va. 2006). Thus, the fee must reflect the actual and necessary cost of preserving the estate. See 11 U.S.C. § 503(b)(1). See also In re Tropea, 352 B.R. at 768. In Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.), 181 F.3d 527 (3d Cir. 1999), the United States Court of Appeals for the Third Circuit explained how the section 503(b)(1) standard applied to break-up fees. The Third Circuit Court of Appeals held that even though bidding incentives are measured against a business judgment standard in non-bankruptcy transactions, the administrative expense provisions of Bankruptcy Code section 503(b) govern in the bankruptcy context. Accordingly, to be approved, bidding incentives must provide some postpetition benefit to the debtor's estate. See id. at 533; see also In re Lamb, 2002 WL 31508913 (Bankr. D. Md. 2002) (implicitly adopting the administrative expense standard set forth in O'Brien).

43. The O'Brien Court identified at least two instances in which bidding incentives may provide benefit to the estate. First, benefit may be found if "assurance of a break-up fee promoted more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." Id. at 537. Second, when the availability of bidding incentives induce a bidder to research the value of the debtor and submit a bid that serves as a minimum or floor bid on which other bidders can rely, "the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth." Id.

44. Here, the Sellers seek authority to utilize the Bid Protections in the event that the Purchaser is not ultimately the Successful Bidder. The proposed Bid Protections, including the Break-Up Fee, are appropriate under Bankruptcy Code section 503. The Bid Protections are fair and reasonable in amount, particularly in view of the efforts that will have to be expended by the Purchaser. Moreover, the Agreement, including the Bid Protections provided for therein, will enable the Sellers to secure an adequate floor for the Auction and, thus, insist that competing bids

be materially higher or otherwise better than the Stalking Horse Bid (as incorporated in the Initial Minimum Overbid requirement), a clear benefit to the Sellers' estates.

45. In sum, the Sellers' ability to offer the Bid Protections enables them to ensure the Sale of the Intellectual Property and Internet Assets to a contractually-committed bidder at a price that they believe to be fair while, at the same time, providing them with the potential of even greater benefit to the estates. Thus, the Bid Protections should be approved.

III. APPROVAL OF THE SALE OF THE INTELLECTUAL PROPERTY AND INTERNET ASSETS IS WARRANTED UNDER BANKRUPTCY CODE SECTIONS 105(A) AND 363(B)(1).

46. As set forth above, Bankruptcy Code section 363(b)(1) authorizes a trustee to "use, sell, or lease" property of the estate with the Court's approval. 11 U.S.C. § 363(b)(1). Assets of the Sellers may be sold outside of the ordinary course of business, pursuant to Bankruptcy Code section 363(b)(1), if a sound business purpose exists for doing so. In re WBQ P'ship, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995)(citing Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986)); see also In re W.A. Mallory Co., Inc., 214 B.R. 834, 836 (Bankr. E.D. Va. 1997).

47. To satisfy the "sound business purpose test," the debtor must demonstrate that (1) a sound business reason or emergency justifies a pre-confirmation sale; (2) the sale was proposed in good faith; (3) the purchase price is fair and reasonable; and, (4) adequate and reasonable notice of the sale has been provided. In re WBQ P'ship, 189 B.R. at 102.

48. Based upon the results of their exhaustive analysis, the Sellers' management and advisors have concluded that the sale of the Intellectual Property and Internet Assets to the Purchaser or the Successful Bidder in accordance with the procedures set forth in the Bidding Procedures will maximize recoveries to the estates and stop deterioration (if any) of the value of the Intellectual Property and Internet Assets. Maximizing asset value and preventing deterioration are sound business purposes that warrant authorizing the proposed Sale.

49. The Sale of the Intellectual Property and Internet Assets will be subject to competing bids, thereby enhancing the Sellers' ability to receive the highest or otherwise best value for the Intellectual Property and Internet Assets. Consequently, the fairness and reasonable-

ness of the consideration to be received by the Sellers will ultimately be demonstrated by a "market check" through the auction process, which is the best means for establishing whether a fair and reasonable price is being paid.

50. Moreover, pursuant to the Notice Procedures, all creditors and parties in interest will receive adequate notice under the circumstances of the Bidding Procedures and the Sale Hearing. In light of the circumstances, such notice is reasonably calculated to provide timely and adequate notice to the Sellers' major creditor constituencies, those parties most interested in these cases, those parties potentially interested in bidding on the Intellectual Property and Internet Assets, and others whose interests are potentially implicated by the proposed Sale.

IV. THE APPOINTMENT OF A CPO IS WARRANTED UNDER BANKRUPTCY CODE SECTION 332

51. Bankruptcy Code section 332 provides, in part, that:

If a hearing is required under section 363(b)(1)(B), the court shall order the United States trustee to appoint, not later than 5 days before the commencement of the hearing, 1 disinterested person... to serve as the consumer privacy ombudsman in the case

11 U.S.C. § 332(a). Bankruptcy Code section 332(b) further provides that the CPO may appear and be heard at the hearing and "shall provide to the court information to assist the court in its consideration of the facts, circumstances and conditions of the proposed sale" of PII. 11 U.S.C. § 332(b).

52. Here, the Sellers are proposing to sell Circuit City Data pursuant to Bankruptcy Code section 363(b)(1)(B). Thus, the Court should order the U.S. Trustee to appoint a CPO to assist the Court in its consideration of the sale of the Circuit City Data and Alpine Data as set forth in the Agreement.

53. CPOs have been appointed by Courts in this district and elsewhere in connection with sales of PII. See, e.g., In re Storehouse, Inc., Case No. 06-11144 (SSM) (Bankr. E.D. Va. 2006); In re Foxtons, Inc., Case No. 07-24496 (MBK) (Bankr. D.N.J. 2007); In re Three A's Holdings, LLC, Case No. 06-10886 (BLS) (Bankr. D. Del. 2006); In re Refco, Inc., Case No. 06-60006 (DD) (Bankr. S.D.N.Y. 2005).

54. Accordingly, the Debtors request that the Court order the U.S. Trustee to appoint a CPO in these chapter 11 cases in connection with the sale of the Circuit City Data.

V. THE SALE OF THE CIRCUIT CITY DATA AND ALPINE DATA ARE APPROPRIATE UNDER BANKRUPTCY CODE SECTION 363(b)(1).

55. Section 363(b)(1) provides that a debtor may sell property outside of the ordinary course of business with court approval. 11 U.S.C. § 363(b)(1). Where such a sale contemplates the transfer of "personally identifiable information" (or PII) and the debtor has a privacy policy pertaining to such information as of the commencement of the case, the debtor must satisfy subsections (b)(1)(A) or (b)(1)(B).

56. Bankruptcy Code section 363(b)(1)(A) authorizes a sale if the applicable privacy policy permits the sale or transfer of PII. 11 U.S.C. § 363(b)(1)(A). By contrast, if the privacy policy does not permit the sale or transfer of personally identifiable information, the Court may approve the sale or transfer if two conditions are satisfied.

57. First, the Court must consider the facts, circumstances and conditions of such sale or transfer. 11 U.S.C. § 363(b)(1)(B)(i). Second, the Court must determine that such sale or transfer does not violate applicable non-bankruptcy law. 11 U.S.C. § 363(b)(1)(B)(ii).

58. More particularly, Bankruptcy Code section 363(b)(1)(B) provides, in relevant part, that:

"[I]f the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless -

...

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease - (i) giving due consideration to the facts, circumstances and conditions of such sale or such lease; and (ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

11 U.S.C. § 363(b)(1).

59. Here, the Debtors are proposing to sell two categories of PII: (1) the Alpine Data; and (2) the Circuit City Data. The Alpine Data is comprised of, among other information, PII obtained by the Sellers during operation of their retail business, but does not include PII obtained through circuitcity.com. The Circuit City Data is comprised of, among other information, PII obtained by the Sellers through circuitcity.com.

60. Although the Sellers collected PII and other data through multiple sales and marketing channels, the Sellers only maintained one privacy policy -- the Privacy Policy. The Privacy Policy was only disclosed on circuit-city.com and only applied to Circuit City Data (not Alpine Data).

A. The Sale of the Alpine Data.

61. As set forth above, Bankruptcy Code section 363(b)(1) authorizes a debtor to sell or transfer PII that is not subject to a privacy policy without satisfying either standard under Bankruptcy Code section 363(b)(1)(A) or (B). Here, the Alpine Data is not (and was not as of the commencement of the Debtors' cases) subject to the Privacy Policy (or any other privacy policy). Thus, the sale of the Alpine Data is subject to the traditional test under Bankruptcy Code section 363(b)(1). See, generally, 11 U.S.C. § 363(b)(1); In re WBQ P'ship, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995).

62. As set forth above in section III hereof, the Sellers submit that sound business purposes exist for the Sale of the Alpine Data.

63. To the extent the Court determines that a sale or transfer of the Alpine Data is subject to Bankruptcy

Code section 363(b)(1)(A) or (B), the Sellers submit that relief under either subsection is warranted for the reasons discussed below pertaining to Circuit City Data.

B. The Sale of the Circuit City Data.

64. As noted above, the Circuit City Data was subject to the Privacy Policy. Thus, the sale or transfer of such data must satisfy Bankruptcy Code section 363(b)(1)(A) or (B). Guided by this section, the Bankruptcy Court for the Eastern District of Virginia has previously approved the sale of PII in In re Storehouse, Inc., Case No. 06-11144 (SSM)(Bankr. E.D. Va. Sep. 11, 2007). In Storehouse, the Court approved the licensing of PII to a licensee of the purchaser with the following conditions:

- (a) The purchaser must be in materially the same line of business as seller;
- (b) The purchaser must use the PII consumer records for the same purpose(s) as are specified in the applicable privacy policy;
- (c) The purchaser must agree to comply with the applicable privacy policy and its specified policies and practices;
- (d) The purchaser must agree that prior to making any "material change" to the applicable privacy policy, or the use or disclosure of personal information different from that specified in such privacy policy, the purchaser will notify all consumers and offer them an opportunity to "opt out" of the changes to those policies or the new uses of their personal information;

- (e) The purchaser must agree to employ appropriate information controls and procedures (technical, operational and managerial) to protect the personally identifiable consumer information; and
- (f) The purchaser must agree to abide by any applicable state privacy and data breach law.

Id. (such conditions, the "Storehouse Conditions").

65. With these conditions in place, this Court approved the sale and license of the PII under Bankruptcy Code section 363(b)(1)(B)(i) and (ii) based on the "facts, circumstances and conditions" of such sale.

66. Here, the Purchaser has agreed, and any Successful Bidder would agree, to comply with substantially all of the Storehouse Conditions with respect to the Circuit City Data. Specifically, with respect to the transfer of the Circuit City Data, the Purchaser has agreed (at a minimum) (a) to adopt and comply with the Privacy Policy with respect to the Circuit City Data; (b) to use PII for the same purpose(s) as are specified in the Privacy Policy; (c) that, prior to making any material change to the Privacy Policy with respect to Circuit City Data or the use or disclosure of PII different from that specified in the Privacy Policy, Purchaser will notify the persons whose PII is included in the Circuit City Data by mail or email and afford such persons the opportunity to opt-out of the changes to

the Privacy Policy or the new uses of their Data; (d) to employ appropriate information security controls and procedures (technical, operational, and managerial) to protect the Circuit City Data; (e) to abide by all applicable US laws and regulations; and (f) to take such additional reasonable actions as may be agreed between the Sellers and the Purchaser or recommended or requested by the CPO.

67. Thus, a sale of the Circuit City Data to the Purchaser or the Successful Bidder would comply with substantially all of the Storehouse Conditions. Accordingly, the Debtors believe that, pursuant to Bankruptcy Code section 363(b)(1)(B), the facts, circumstances and conditions of the sale of the Circuit City Data are such that the sale should be approved.

VI. THE PURCHASER IS OR SUCCESSFUL BIDDER WOULD BE A GOOD FAITH PURCHASER PURSUANT TO BANKRUPTCY CODE SECTION 363(M) AND THE TRANSACTION CONTEMPLATED BY THE AGREEMENT SHOULD CARRY THE PROTECTIONS OF BANKRUPTCY CODE SECTION 363(N).

68. Bankruptcy Code section 363(m) provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such

authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). While the Bankruptcy Code does not define "good faith," the Fourth Circuit Court of Appeals has "adopt[ed] the traditional equitable definition that has been adopted by various courts of appeal: 'one who purchases the assets for value, in good faith, and without notice of adverse claims.'" Willemain v. Kivitz, 764 F.2d 1019, 1023 (4th Cir. 1985)(citations omitted).

69. Bankruptcy Code section 363(n) further provides, in relevant part, that:

The trustee may avoid a sale under this section if the sale price was controlled by an agreement among potential bidders at such sale, or may recover from a party to such agreement any amount by which the value of the property sold exceeds the price at which such sale was consummated, and may recover any costs, attorneys' fees, or expenses incurred in avoiding such sale or recovering such amount.

11 U.S.C. § 363(n).

70. The Sellers submit, and will present evidence at the Sale Hearing, that the Agreement reflects an intensely negotiated, arm's length transaction. Throughout the negotiations, the Purchaser has at all times acted in good faith. Moreover, to the extent that the assets are sold to a Successful Bidder, it will be because of a well-

planned competitive process and arm's length negotiations. Additionally, the Bidding Procedures ensure that a prospective purchaser will not be able to exert any undue influence over the Sellers. Moreover, the Purchaser's is or Successful Bidder's bid will not be the product of fraud or collusion between the Purchaser or Successful Bidder and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

71. As a result of the foregoing, the Sellers request that the Court make a finding that the purchase price to be paid by the Purchaser or the Successful Bidder constitutes reasonably equivalent value and fair consideration under any applicable law. The Sellers further request that this Court make a finding that the Purchaser or the Successful Bidder, as the case may be, has purchased the Intellectual Property and Internet Assets in good faith within the meaning of Bankruptcy Code section 363(m). Additionally, the Sellers request that this Court make a finding that a purchase agreement reached as a result of the Bidding Procedures necessarily will comprise an arm's length, intensely-negotiated transaction entitled to the protections of Bankruptcy Code section 363(m) and that the transactions contem-

plated by the Agreement are not avoidable under Bankruptcy Code section 363(n).

VII. THE SALE OF THE INTELLECTUAL PROPERTY AND INTERNET ASSETS SHOULD BE FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES UNDER BANKRUPTCY CODE SECTION 363(f).

72. To facilitate a sale of the Intellectual Property and Internet Assets, the Sellers request authorization to sell the Intellectual Property and Internet Assets free and clear of any and all Interests.

73. Under Bankruptcy Code section 363(f), a debtor in possession may sell property free and clear of any interest in such property if, among other things:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

74. Section 363(f) permits the sale of estate property free and clear of interests if any one of the five

conditions above is met. See, e.g., In re Laines, 352 B.R. 410, 414-15 (Bankr. E.D. Va. 2005).

75. Courts have held that the authority of a debtor to sell assets free and clear of interests is broad and should be read expansively. See In re TWA, Inc., 322 F.3d 283, 289 (3d Cir. 2003); see also United Mine Workers of Am. 1992 Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.), 99 F.3d 573, 582 (4th Cir. W. Va. 1996) (holding that the phrase "any interest in property" includes more than just in rem interests); In re P.K.R. Convalescent Centers, Inc., 189 B.R. 90, 94 (Bankr. E.D. Va. 1995) ("As the plain meaning of the statute demonstrates, § 363 covers more situations than just sales involving liens."). Moreover, courts have noted that the purpose of the "free and clear" language is to allow the debtor to obtain a maximum recovery on its assets in the marketplace. See In re TWA, Inc., 2001 Bankr. LEXIS 723, at *8-*10 (Bankr. D. Del. Mar. 27, 2001).

76. Accordingly, this Court should authorize the Sellers to sell the Intellectual Property and Internet Assets free and clear of all Interests, with any such Interests attaching to the net proceeds of the sale of the Intel-

lectual Property and Internet Assets in the same order and priority as they exist against the Intellectual Property and Internet Assets and in accordance with the terms and provisions of the DIP Facility.

VIII. THE TEN-DAY STAY PROVIDED BY BANKRUPTCY RULE 6004 SHOULD BE WAIVED FOR ANY ORDER APPROVING THE SALE OF THE INTELLECTUAL PROPERTY AND INTERNET ASSETS.

77. Bankruptcy Rule 6004(h) provides that: "[a]n order authorizing the use, sale, or lease of property is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h).

78. The Sellers request that the Court waive the ten-day stays of Bankruptcy Rule 6004 with respect to the Sale of the Intellectual Property and Internet Assets following entry of any and all orders approving such transactions. By waiving such requirement, the Sellers and any purchaser will be able to immediately close the transactions approved by such orders, which will in turn save the Sellers continued accrual of administrative expenses and thereby benefit the Sellers' estates.

NOTICE

79. Notice of this Motion has been provided to those parties entitled to notice under this Court's Order

Pursuant to Bankruptcy Code Sections 102 and 105, Bankruptcy Rules 2002 and 9007, and Local Bankruptcy Rules 2002-1 and 9013-1 Establishing Certain Notice, Case Management, and Administrative Procedures (Docket No. 130). Following entry of the Bidding Procedures Order, the Debtors will provide notice as directed therein.

WAIVER OF MEMORANDUM OF LAW

80. Pursuant to Local Bankruptcy Rule 9013-1(G), and because there are no novel issues of law presented in the Motion and all applicable authority is set forth in the Motion, the Sellers request that the requirement that all motions be accompanied by a separate memorandum of law be waived.

NO PRIOR REQUEST

81. No previous request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

WHEREFORE, the Sellers respectfully request that the Court (i) enter the Bidding Procedures Order, substantially in the form annexed hereto, (ii) enter the CPO Order, substantially in the form annexed hereto, (iii) following completion of the Auction, enter the Sale Approval Order, substantially in the form annexed hereto and (iv) grant such other and further relief as may be just and proper.

Dated: April 9, 2009
Richmond, Virginia

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EXHIBIT A - BID PROCEDURES ORDER WITH EXHIBITS

INTENTIONALLY OMITTED

EXHIBIT B

(CPO Order)

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IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 RICHMOND DIVISION

- - - - - x
 In re: : Chapter 11
 :
 CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)
et al., :
 :
 Debtors. : Jointly Administered
 - - - - - x

**ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105, 332 AND
 363 AUTHORIZING U.S. TRUSTEE TO APPOINT CONSUMER PRIVACY
 OMBUDSMAN**

Upon the motion (the "Motion")¹ of Circuit City
 Stores West Coast, Inc., and Circuit City Stores, Inc.
 (the "Sellers" and, collectively with the debtors and

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

debtors in possession in the above-captioned jointly administered cases, the "Debtors"), for entry of orders under Bankruptcy Code sections 105, 332 and 363 and Bankruptcy Rules 2002 and 6004, (I)(A) approving procedures in connection with soliciting bids for a sale (the "Sale") of certain of the Sellers' intellectual property, internet-related property and customer information (collectively the "Intellectual Property and Internet Assets"), (B) authorizing the Sellers to enter into a stalking horse agreement in connection therewith, (C) approving certain Bid Protections in connection therewith, (D) approving the form and manner of sale notice and (E) scheduling Auction and Sale Hearing dates; (II) authorizing the U.S. Trustee to appoint a consumer privacy ombudsman; (III) approving the Sale of the Intellectual Property and Internet Assets free and clear of all Interests and (IV) granting related relief; and the Court having reviewed the Motion; and the Court having determined that the relief requested in the Motion is in the best interests of the Sellers, their estates, their creditors, and other parties in interest; and it appearing that proper and adequate notice of the Motion

has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:²

A. The court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

B. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

C. The statutory and legal predicates for the relief requested in the Motion are Bankruptcy Code sections 105, 332 and 363 and Bankruptcy Rules 2002 and 6004.

D. Good and sufficient notice of the relief granted by this Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order has

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

been afforded to those parties that requested notice pursuant to Bankruptcy Rule 2002 and the Core Group (as defined in the Case Management Order).

E. The assets to be sold pursuant to the proposed Sale include personally identifiable information about individuals such that the appointment of a CPO is required under Bankruptcy Code section 332.

F. The entry of this Order is in the best interests of the Sellers and their estates, creditors, and interest holders and all other parties in interest herein; and it is therefore

ORDERED, ADJUDGED AND DECREED THAT:

1. Pursuant to Bankruptcy Code sections 332 and 363(b)(1)(B) and Bankruptcy Rule 6004, the U.S. Trustee is authorized to appoint a CPO in these cases.

2. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is hereby waived.

3. Nothing in this Order, the Agreement or the Motion shall be deemed to or constitute the assumption or assignment of an executory contract or unexpired lease.

4. This Court shall retain jurisdiction with respect to all matters arising or related to the implementation of this Order.

Dated: Richmond, Virginia
_____, 2009

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

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Counsel to the Debtors and Debtors in Possession

CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)

Pursuant to Local Bankruptcy Rule 9022-1(C), I
hereby certify that the foregoing proposed order has
been endorsed by or served upon all necessary parties.

/s/ Douglas M. Foley

Douglas M. Foley

EXHIBIT C

(Sale Approval Order)

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Counsel to the Debtors and
 Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 RICHMOND DIVISION

- - - - - X
 In re: : Chapter 11
 :
 CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)
et al., :
 :
 Debtors. : Jointly Administered
 - - - - - X

**ORDER (I) APPROVING SALE OF INTELLECTUAL PROPERTY,
 INTERNET-RELATED PROPERTY AND CUSTOMER INFORMATION FREE
 AND CLEAR OF ALL INTERESTS; AND (II) GRANTING RELATED
 RELIEF**

Upon the motion (the "Motion")¹ of Circuit City
 Stores West Coast, Inc., and Circuit City Stores, Inc.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

(the "Sellers" and, collectively with the debtors and debtors in possession in the above-captioned jointly administered cases, the "Debtors"), for entry of orders under Bankruptcy Code sections 105, 332 and 363 and Bankruptcy Rules 2002 and 6004, (I)(A) approving procedures in connection with soliciting bids for a sale (the "Sale") of certain of the Sellers' intellectual property, internet-related property and customer information (collectively the "Intellectual Property and Internet Assets"), (B) authorizing the Sellers to enter into a stalking horse agreement in connection therewith, (C) approving certain Bid Protections in connection therewith, (D) approving the form and manner of sale notice and (E) scheduling Auction and Sale Hearing dates (each as defined below); (II) authorizing the U.S. Trustee to appoint a consumer privacy ombudsman (the "CPO"); (III) approving the Sale of the Intellectual Property and Internet Assets free and clear of all Interests and (IV) granting related relief; and the Court having conducted a hearing on the Motion on May 13, 2009 (the "Sale Hearing"); and all parties in interest having been heard, or having had the opportunity to be heard, re-

garding the agreement attached hereto as Exhibit 1 (the "Agreement"), by and among the Sellers and Systemax Inc. (the "Purchaser") and the transactions contemplated thereby (the "Transactions"); and the Court having reviewed and considered the Motion, and the arguments of counsel made, and the evidence adduced, at the Sale Hearing; and upon the record of the Sale Hearing and these chapter 11 cases, and after due deliberation thereon, and good cause appearing therefore it is hereby

FOUND AND DETERMINED THAT:²

A. The Court has jurisdiction to hear and determine the Motion and to grant the relief requested in the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b).

B. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

C. The statutory predicates for the relief requested in the Motion are Bankruptcy Code sections 105, 332 and 363 and Bankruptcy Rules 2002 and 6004.

D. Notice of the Motion and entry of the Sale Order has been provided to (A)(i) all entities known to have expressed an interest in a transaction with respect to the Intellectual Property and Internet Assets during the past three (3) months, (ii) all entities known to have asserted any Lien upon the Intellectual Property and Internet Assets, (iii) all federal, state, and local regulatory or taxing authorities or recording offices, which have a reasonably known interest in the relief requested by the Motion and (iv) all parties entitled to notice under the Order Pursuant to Bankruptcy Code Sections 102 and 105, Bankruptcy Rules 2002 and 9007, and Local Bankruptcy Rules 2002-1 and 9013-1 Establishing Certain Notice, Case Management, and Administrative Procedures (D.I. 130; the "Case Management Order") and (B) other parties through publication of the Sale Notice, all in accordance with and as provided by the Bidding Procedures Order.

E. Based upon the affidavits of service and publication filed with the Court: (a) notice of the Motion and the Sale Hearing was adequate and sufficient under the circumstances of these chapter 11 cases and these proceedings and complied with the various applicable requirements of the Bankruptcy Code and the Bankruptcy Rules and the Bidding Procedures Order; and (b) a reasonable opportunity to object and be heard with respect to the Motion and the relief requested therein was afforded to all interested persons and entities.

F. The Intellectual Property and Internet Assets are property of the Sellers' estates and title thereto is vested in the Sellers' estates.

G. The Sellers and their professionals marketed the Intellectual Property and Internet Assets and conducted the marketing and sale process as set forth in and in accordance with the Motion. Based upon the record of these proceedings, all creditors and other parties in interest and all prospective purchasers have been afforded a reasonable and fair opportunity to bid for the Intellectual Property and Internet Assets.

H. After an auction held on May 11, 2009 (the "Auction"), the Sellers determined that the highest and best Qualified Bid was that of Purchaser and the next highest and best Qualified Bid (the "Alternate Bid") was that of _____ (the "Alternate Bidder").² The Alternate Bidder has agreed to keep the Alternate Bid open until consummation of the Transactions contemplated by the Agreement with the Purchaser.

I. Subject to the entry of this Order, each Seller (i) has full power and authority to execute the Agreement and all other documents contemplated thereby, and the sale of the Intellectual Property and Internet Assets by the Sellers has been duly and validly authorized by all necessary company action of each of the Sellers, (ii) has all of the power and authority necessary to consummate the Transactions contemplated by the Agreement, (iii) has taken all company action necessary to authorize and approve the Agreement and the consumma-

² In the event the Sellers do not consummate the Transactions with the Purchaser contemplated by the Agreement, all references (other than references in this footnote) to the Purchaser shall be a reference to the Alternate Bidder and all references to the Agreement shall be a reference to the Alternate Bid. No further court order shall be required for the Sellers to close the transactions contemplated by the Alternate Bid with the Alternate Bidder.

tion by the Sellers of the Transactions. No consents or approvals, other than those expressly provided for in the Agreement or this Order, are required for the Sellers to close the Sale and consummate the Transactions.

J. The Agreement and the Transactions were negotiated and have been and are undertaken by the Sellers and the Purchaser at arms' length without collusion or fraud, and in good faith within the meaning of Sections 363(m) of the Bankruptcy Code. As a result of the foregoing, the Sellers and the Purchaser are entitled to the protections of Section 363(m) of the Bankruptcy Code.

K. The total consideration provided by the Purchaser for the Intellectual Property and Internet Assets is the highest and best offer received by the Sellers, and the Purchase Price constitutes (a) reasonably equivalent value under the Bankruptcy Code and Uniform Fraudulent Transfer Act, (b) fair consideration under the Uniform Fraudulent Conveyance Act, and (c) reasonably equivalent value, fair consideration and fair value under any other applicable laws of the United States, any state, territory or possession, or the District of

Columbia ((a), (b) and (c) collectively, "Value"), for the Intellectual Property and Internet Assets.

L. The Purchaser would not have entered into the Agreement and would not consummate the Transactions, thus adversely affecting the Sellers, their estates and creditors, if the sale of the Intellectual Property and Internet Assets to the Purchaser was not free and clear of all Interests (as defined herein), or if the Purchaser would, or in the future could, be liable for any of such Interest. A sale of the Intellectual Property and Internet Assets other than one free and clear of all Interests would adversely impact the Sellers' estates, and would yield substantially less value for the Debtors' estates, with less certainty than the Sale. Therefore, the Sale contemplated by the Agreement is in the best interests of the Sellers, their estates and creditors, and all other parties in interest.

M. The Sellers may sell the Intellectual Property and Internet Assets free and clear of all Interests, because, with respect to each creditor asserting a Interest, one or more of the standards set forth in Bankruptcy Code § 363(f)(1)-(5) has been satisfied.

Those holders of Interest who did not object or who withdrew their objections to the Sale or the Motion are deemed to have consented to the Motion and Sale pursuant to Bankruptcy Code § 363(f)(2). Those holders of Interests who did object fall within one or more of the other subsections of Bankruptcy Code Section 363(f).

N. Neither the Sellers nor Purchaser engaged in any conduct that would cause or permit the Agreement or the consummation of the Transactions to be avoided, or costs or damages to be imposed, under Section 363(n) of the Bankruptcy Code.

O. The Purchaser is not holding itself out to the public as a continuation of the Sellers and is not an "insider" or "affiliate" of any of the Debtors.

P. Entry into the Agreement and consummation of the Transactions constitute the exercise by the Sellers of sound business judgment and such acts are in the best interests of the Sellers, their estates and creditors, and all parties in interest. The Court finds that the Sellers have articulated good and sufficient business reasons justifying the Sale of the Intellectual Property and Internet Assets to Purchaser. Such busi-

ness reasons include, but are not limited to, the following: (i) the Agreement constitutes the highest and best offer for the Intellectual Property and Internet Assets; (ii) the Agreement and the closing thereon will present the best opportunity to realize the value of the Intellectual Property and Internet Assets and avoid decline and devaluation of the Intellectual Property and Internet Assets; (iii) there is substantial risk of deterioration of the value of the Intellectual Property and Internet Assets if the Sale is not consummated promptly; and (iv) the Agreement and the closing thereon will provide a greater recovery for the Sellers' creditors than would be provided by any other presently available alternative.

Q. Upon due consideration, and upon review of the report of the CPO filed on _____, 2009 (as may have been modified, the "CPO Report"), the facts, circumstances and conditions of the sale of the Circuit City Data (as defined in the Agreement), including any personally identifiable information ("PII") incorporated therein, warrant approval of the Sale under Bankruptcy Code section 363(b)(1)(B).

R. The Alpine Data (as defined in the Agreement), including any PII, is not subject to a privacy policy. Thus, relief under Bankruptcy Code section 363(b)(1) is warranted without the need for the Debtors or any other party to comply with Bankruptcy Code section 363(b)(1)(A) or (B).

S. Time is of the essence in consummating the Sale. In order to maximize the value of the Sellers' assets, it is essential that the sale of the Intellectual Property and Internet Assets occur within the time constraints set forth in the Agreement. Accordingly, there is cause to lift the stay contemplated by Bankruptcy Rule 6004.

T. The Sale contemplated by the Agreement is in the best interests of the Debtors and their estates, creditors, interest holders and all other parties in interest herein; and it is therefore

ORDERED, ADJUDGED AND DECREED THAT:

1. The relief requested in the Motion is GRANTED.

2. Pursuant to Bankruptcy Code sections 105 and 363, the Agreement attached hereto as Exhibit 1 and

the Sale of the Intellectual Property and Internet Assets to Purchaser are hereby approved and authorized in all respects.

3. Pursuant to Bankruptcy Code sections 363(b) and 363(f), upon the consummation of Transactions contemplated by the Agreement, the Sellers' right, title, and interest in the Intellectual Property and Internet Assets shall be transferred to the Purchaser free and clear of all interests, including (without limitation) all liens, mortgages, security interests, charges, easements, leases, subleases, covenants, rights of way, options, claims, restrictions or encumbrances of any kind, except the Assumed Liens (as defined in the Agreement), (the "Liens") and all debts, adverse claims, liabilities, commitments, responsibilities and obligations of any kind or nature whatsoever, direct, indirect, absolute or contingent, matured or unmatured, whether accrued, vested or otherwise, whether known or unknown, foreseen or unforeseen, and whether or not actually reflected, or required to be reflected, in a party's balance sheets or other books and records (the "Liabilities" and together with the Liens, the "Inter-

ests"), with all such Interests to attach to the cash proceeds of the Sale in the order of their priority, with the same validity, force, and effect that they had as against the Intellectual Property and Internet Assets immediately before such transfer, subject to any claims and defenses the Sellers may possess with respect thereto.

4. Except as may be expressly provided in the Agreement, Purchaser is not assuming nor shall it or any affiliate of Purchaser be in any way liable or responsible, as a successor or otherwise, for any liabilities, debts, or obligations of the Sellers in any way whatsoever relating to or arising from the Sellers' ownership or use of the Intellectual Property and Internet Assets prior to the consummation of the Transaction contemplated by the Agreement, or any liabilities calculable by reference to the Sellers or the Intellectual Property and Internet Assets, or relating to continuing or other conditions existing on or prior to the Closing.

5. The Transactions were undertaken by the Purchaser in good faith and the Purchaser is a good faith purchaser of the Intellectual Property and Inter-

net Assets as that term is used in Bankruptcy Code section 363(m). The Purchaser is entitled to all of the protections afforded by Section 363(m) of the Bankruptcy Code.

6. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Sellers and the Purchaser are each hereby authorized to take any and all actions necessary or appropriate to: (i) consummate the Sale of the Intellectual Property and Internet Assets to Purchaser and the Closing of the Sale in accordance with the Motion, the Agreement and this Order; and (ii) perform, consummate, implement and close fully the Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Agreement.

7. Pursuant to Bankruptcy Code section 363(b)(1)(B), with respect to the transfer of the Circuit City Data and any associated PII, the Purchaser shall (i) adopt and comply with the privacy policy attached as Schedule G to the Agreement (the "Privacy Policy") with respect to the Circuit City Data; (ii) use PII for the same purpose(s) as are specified in the Pri-

vacy Policy; (iii) prior to making any material change to the Privacy Policy with respect to the Circuit City Data or the use or disclosure of PII different from that specified in the Privacy Policy, notify the persons whose PII is included in the Circuit City Data by mail or email and afford such persons the opportunity to opt-out of the changes to the Privacy Policy or the new uses of their Data; (iv) employ appropriate information security controls and procedures (technical, operational, and managerial) to protect the Circuit City Data; and (v) abide by all applicable US laws and regulations.

8. This Order is and shall be binding upon and govern the acts of all entities, including, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies or units, governmental departments or units, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report

or insure any title or state of title in or to the Intellectual Property and Internet Assets conveyed to Purchaser. All such entities described above in this paragraph are authorized and specifically directed to strike all recorded Interests against the Intellectual Property and Internet Assets from their records, official and otherwise.

9. Each and every federal, state and governmental agency or department, and any other person or entity, is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement.

10. This Order shall be effective immediately upon entry, and any stay of orders provided for in Bankruptcy Rule 6004(h) or any other provision of the Bankruptcy Code or Bankruptcy Rules is expressly lifted.

11. To the extent permitted by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any right, license, trademark or other permission relating to the use of the Intellectual Property and Internet Assets sold, transferred or conveyed to

Purchaser on account of the filing or pendency of these Chapter 11 cases or the consummation of the Sale.

12. The Agreement and any related agreements, documents or instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof, without further order of this Court.

13. To the extent this Order is inconsistent with any prior order or pleading with respect to the Motion in these chapter 11 cases, the terms of this Order shall govern. To the extent there is any inconsistency between the terms of this Order and the terms of the Agreement (including all ancillary documents executed in connection therewith), the terms of the Agreement and such documents shall govern.

14. The Court retains jurisdiction, even after the closing of these chapter 11 cases, to:

(1) interpret, implement and enforce the terms and provisions of this Order (including the injunctive relief provided in this Order) and the terms of the Agreement, all amendments thereto and any waivers and consents thereunder; (2) protect the Purchaser, or the Intellectual Property and Internet Assets, from and against any

of the Interests; (3) compel delivery of all Intellectual Property and Internet Assets to Purchaser; and
(4) resolve any disputes arising under or related to the Agreement, the Sale or the Transactions or Purchaser's peaceful use and enjoyment of the Intellectual Property and Internet Assets.

Dated: Richmond, Virginia
_____, 2009

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

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Counsel to the Debtors and Debtors in Possession

CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Douglas M. Foley
Douglas M. Foley

EXHIBIT 1

(Agreement)

EXHIBIT D

(Sale Notice"/"Kpvgpvkqpcnn{"qokvvgf)

EXHIBIT 2

(Bidding Procedures Order)